IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

...

:: JUDGMENT ::

(1)The Executive Engineer Vs. Jai Singh & Anr.
Irrigation Division-I, Udaipur

S.B.CIVIL MISC. APPEAL NO.220/1993

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(2) The Executive Engineer Vs. Smt.Hira Bai & ors.
Irrigation Division-I, Udaipur

S.B.CIVIL MISC. APPEAL NO.221/1993

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(3) The Executive Engineer Vs. Vaini Singh & anr.
Irrigation Division-I, Udaipur

S.B.CIVIL MISC. APPEAL NO.222/1993

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Against the common award dated 19.04.1993 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case Nos.27/1987, 46/1987 and 45/1987.

Date of Judgment ::: 6th September 2006.

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. B.L.Bhati, Addl. Government Advocate for the appellant

Mr. Dilip Kawadia) for the respondents
Mr.Shambhoo Singh Rathore)

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BY THE COURT:

These three appeals preferred against the common award dated 19.04.1993 made by the Motor Accidents Claims Tribunal, Udaipur relate to the same accident and involve common questions; hence were heard together and are taken up for disposal by this common judgment.

The only grounds urged in these appeals submitted by the Executive Engineer, Irrigation Division-I, Udaipur against the impugned award are that the claim applications were incompetent for the State of Rajasthan having not been impleaded as party non-applicant in the claim cases; and that the Tribunal has erred in awarding interest at the rate of 12% per annum with the stipulation that claimants shall be entitled for interest at the rate of 15% per annum in default of payment within two months.

Background facts are that on 17.09.1988 on capsizing of a truck bearing registration No.RSY 1215 several occupants of the truck sustained injuries, and one of them, Manohar Singh, 30 years in age, succumbed to injuries. Several applications claiming compensation were submitted and the non-applicant No.2, the present appellant, Executive

Engineer, Irrigation Division, Udaipur contested with the submissions that one Bachchan Singh was appointed as driver of the vehicle in question and Punja Ram the person found driving the vehicle was not authorised to drive and, therefore, the non-applicant was not liable for compensation; that the applicant has impleaded the Executive Engineer, Irrigation Division, Udaipur as party non-applicant though the Government of Rajasthan was the real owner of the vehicle; and that the vehicle in question was goods carrying government vehicle and the non-applicants were not liable in compensation for the persons travelling in the said vehicle.

The Tribunal framed the following issues for determination of the questions involved in the claim cases:-

> "1- क्या दिनांक 17-9-86 को विपक्षी नं01 पूंजा राम द्वारा ट्रक नं0 आर 0 एस 0 वाई 0 1215 को गफलत व लापरवाही से चलाने के कारण मनोहर सिंह की मृत्यु हो गई तथा वेणी सिंह के गंभीर तथा चेन सिंह, देवी सिंह, जय सिंह, हेम सिंह, व वजे सिंह के साधारण चोटें पहुंची ?
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> 2- क्या सभी सात प्रकरणों के प्रार्थीगण अपने अपने क्लेम में मांगी गई राशि या अन्य कोई राशि प्राप्त करने के अधिकारी है ओर यदि है तो कितनी कितनी व किस किस से प्राप्त करने के अधिकारी है ?
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> 3- क्या विपक्षी नं0 2 अपने जवाब दावे में वर्णित कारणों से किसी राशि की अदायगी का जिम्मेदार नहीं है ।
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> 4- पक्षकारान किस सहायता के पात्र है ?"

The learned Judge of the Tribunal after appreciation of evidence on record found that the accident was caused by Punja Ram who was a driver in the Irrigation Department and was competent to drive the said truck; that the non-applicants had not produced any evidence about authorisation for driving of the said truck nor produced the relevant evidence of posting orders, log-book and enquiry report etc.; and that the said driver Punja Ram was also not produced in evidence. The learned Judge observed that it could not be accepted that occupants of the truck boarded it without permission of the driver and also found that the vehicle in question was driven in rash and uncontrolled manner that rammed into a hillock and capsized.

In relation to the objection of the non-applicant about impleadment of the Executive Engineer, Irrigation Division-I, Udaipur as non-applicant and not impleading of the State of Rajasthan as a party, learned Judge observed that such was only a technical objection and else the claim for compensation had been specifically contested by the said Executive Engineer and in view of the scheme and purpose of the beneficial provisions of the Motor Vehicles Act, such objection cannot be countenanced.

The Tribunal has proceeded to award compensation in the sum of Rs.1,83,000/- in Claim Case No.46/1987 (pertaining to CMA No.221/1993) in relation to death of Manohar Singh, 30 years in age; Rs.25,000/- in Claim Case No.45/1987 (pertaining to CMA No.222/1993) in relation to injury suffered by the claimant Vaini Singh, aged 30 years; and Rs.24,000/- in Claim Case No.27/1987 (pertaining to CMA No.220/1993) in relation to injury suffered by the claimant Jai Singh,aged 30 years. The Tribunal further directed that the compensation amount shall be deposited by the non-applicant within two months and else the claimants shall be entitled to interest at the rate of 15% per annum.

Mr.B.L.Bhati, learned Addl. Government Advocate appearing for the appellant has strenuously contended that the claim applications were incompetent for non-impleadment of State of Rajastan as party non-applicant and further that the learned Tribunal was in error in putting the stipulation of penal interest at the rate of 15% per annum after two months of award.

So far objection regarding non-impleadment of State of Rajasthan as party non-applicant is concerned, this Court is of opinion that in the fact situation of these cases, such objection

falls short of substance and deserves to be rejected. It is of course true that in a claim for compensation under the Motor Vehicles Act, the claimant shall be required to implead the owner of the vehicle involved in the accident a party non-applicant but so far juristic person entities are concerned, it cannot be said that the claimants be deprived of the amount of compensation only because the named entity as such has not been described as a party non-applicant. It is not in dispute that the truck in question was of the Irrigation Department of the Government of Rajasthan and was being driven by a driver employed with the Irrigation Department. For the purpose of claim for compensation if the Executive Engineer, incharge of the vehicle in question, had been impleaded as party non-applicant, the claim application cannot be treated to be suffering from want of impleadment of necessary party or being entirely incompetent. The said non-applicant Executive Engineer was directly in possession and control of the vehicle in question and for the purposes of Motor Vehicles Act, particularly for the purpose of claim for compensation, the said Executive Engineer would be answering to the description of 'owner' of the vehicle. Viewed from any angle, the objection sought to be raised by the learned Addl. Government Advocate remains more of form rather than of substance and is, therefore, rejected.

However, so far the stipulation made by the Tribunal of allowing interest at the rate of 15% per annum in default of payment of award amount within two months is concerned, the same cannot be sustained. The Tribunal has allowed claim for compensation submitted by different claimants and awarded reasonable amount of compensation and has further allowed higher rate of interest then prevailing, at 12% per annum. Thereafter, there was no reason or occasion for the Tribunal to make such stipulation of awarding interest at the rate of 15% per annum if the payment would not be made within two months from the date of award. Such penal rate of interest, in the circumstances of the case,does not appear justified and the learned counsel appearing for the claimants also could not justify such stipulation. The impugned award in so far it relates to the said stipulation of allowing interest at the rate 15% per annum, therefore, deserves to be modified.

As a result of the aforesaid, these appeals succeed to the extent indicated above and are partly allowed. The impugned award dated 19.04.1993 is modified only in relation to the stipulation regarding rate of interest; and allowing interest at the rate of 15% per annum after two months from the date of award is set aside. The claimants shall be entitled

to interest at the rate of 12% per annum from the date of filing of respective claim cases.

The amount, if any, remaining due to be paid under the modified award shall be deposited by the appellant within 30 days with the Tribunal and the same shall be apportioned in the manner and proportion as contemplated by the impugned award. No costs.

(DINESH MAHESHWARI), J.

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